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Promotion and protection of human rights

**Letter dated 1 August 2014 from the Permanent Representative
of Uzbekistan to the United Nations addressed to the
Secretary-General**

I have the honour to convey to you the attached information on the results of the reform of the judicial system in Uzbekistan since independence (see annex).

I would appreciate it if you could circulate the present letter and its annex as a document of the General Assembly under agenda item 69, "Promotion and protection of human rights".

(Signed) Muzaffarbek Madrakhimov
Permanent Representative



Annex to the letter dated 1 August 2014 from the Permanent Representative of Uzbekistan to the United Nations addressed to the Secretary-General

[Original: Russian]

Results of judicial system reform in Uzbekistan since independence

The main objectives of the judicial reforms in Uzbekistan are to change the substance of the legal and judicial system, to make it the main guarantor of the effective protection of human rights and to ensure the genuine independence of the judiciary. In the years since the country achieved its independence, specific measures in this area have been adopted and are being implemented.

Courts

In order to improve the courts' consideration of cases, specialized criminal, civil and commercial courts have been established in accordance with the Courts Act, as has an appeals process for the consideration of cases.

A citizen who is not in agreement with a verdict handed down by the court of first instance now has the opportunity to defend his or her rights and interests in appellate court or in a court of cassation, using the services of a lawyer. These innovations contribute to the timely correction of errors made by the courts and reduce paperwork.

In connection with the transfer, as of 1 January 2008, of the right to authorize detention (the adoption of habeas corpus) from the prosecutor's office to the courts, the courts' powers to provide effective protection of citizens' rights have been significantly expanded.

The establishment under the aegis of the Supreme Court of a centre for research to democratize and liberalize judicial legislation and ensure the independence of the judiciary promotes the rule of law in the administration of justice and deters interference in the administration of the courts and wrongful judicial decisions.

To strengthen safeguards protecting entrepreneurs, the responsibility for exerting legal leverage on business enterprises, including suspending their activities, freezing bank transactions and enforcing financial sanctions, has been shifted from the oversight bodies to the courts.

Presidential Order No. R-3949, adopted on 29 December 2012, on improving the work of the Presidential High-level Qualifying Commission for the selection and recommendation of judges, under which new regulations on this Commission were approved, facilitated the adoption of urgent measures to radically improve and enhance institutional and legal mechanisms for the selection and training of candidates for judgeships and further ensure genuine independence for the judiciary.

The criminal procedure law has been amended to remove from the authority of the courts the right to initiate criminal proceedings or to announce an indictment in such proceedings, thereby ensuring the objectivity and impartiality of the court and strengthening the adversarial principle in the conduct of criminal cases.

Presidential Decree No. UP-4459 of 2 August 2012 on measures to radically improve social protections for judicial system employees and a presidential decree of 30 November 2012 on institutional measures to further improve the functioning of the judiciary have been important in strengthening the authority of the judiciary and creating an effective judicial staff selection and placement system that is responsive to the needs of democracy today.

Under these decrees:

- The minimum age for a first-time appointment to a judgeship in inter-district or district (municipal) courts has been raised from 25 to 30; five years of legal experience are required; and the professional training requirements have been increased.
- The necessary legal and social guarantees for independent court proceedings have been strengthened, as have protections of the social status of employees in the judiciary.
- Judges' salaries have been increased significantly, and modern information and communications technologies have been integrated into the work of the judiciary.

Also, Cabinet of Ministers Decision No. 346 of 10 December 2012 on measures to integrate modern information and communications technologies into the work of the judiciary was adopted in order to actively integrate modern information and communications technologies into the work of the judiciary and make court proceedings more efficient. The decision is designed to increase computerization and spread the effective use of computer technology, establish information systems and resources in the courts, expand interactive services provided to business enterprises and the public and, most importantly, introduce electronic court proceedings, which are being used successfully in many countries.

The commercial courts now have a mechanism making it possible to generate necessary court documentation electronically. Members of the public can thus file claims with the commercial courts over the Internet.

In addition, the adoption of videoconferencing between commercial courts enables citizens to attend via videoconference, including observing trials and meeting with senior-level commercial court officials. All of this will lead ultimately to more effective oversight of trial activity, as provided for in article 43 of the Courts Act.

Head of State Decree No. UP-570 of 4 October 2013 on measures to improve and enhance the effectiveness of general-jurisdiction district and municipal courts is very important to further improve and enhance the effectiveness of general-jurisdiction courts and to carry out measures to establish appropriate procedures and streamline the courts' workload. The Decree provides for an increase in the number of civil court justices to 71; a redistribution of the number of district courts and courts of equivalent status by transferring 23 judicial posts from courts with a lighter workload; and also modifications to the structure of the Supreme Court.

Liberalization of the penal law

As a result of the work to liberalize the penal and criminal procedural law, the years of independence have seen the following achievements in Uzbekistan:

- The number of crimes considered serious has been reduced, meaning that some crimes previously classified as serious or especially serious have been reclassified as less serious crimes that do not pose a major public danger.
- For certain crimes, alternative, non-custodial forms of punishment have been introduced.
- In criminal matters in the commercial sphere, financial penalties (fines) are now replacing incarceration in a larger number of cases. Confiscation of property as punishment for criminal offences has been discontinued as inhumane.
- As part of judicial and legal reforms, a reconciliation process has been introduced, reflecting features of our national mindset and embodying traits and traditions intrinsic to our people, such as generosity, forbearance and sympathy for those who have committed missteps. Since its introduction, 138,527 cases involving 150,346 persons have resulted in non-custodial penalties. Today in our country, the reconciliation process may be used for 60 different types of crimes.
- The Criminal Code now includes rules on not using custodial penalties in cases where damage has been compensated. This rule, which is consistent with the principles of humanism and generosity, is having the expected outcome. For example, the number of persons incarcerated in 2013 was less than half of the number of persons incarcerated in 2000. In particular, following the adoption of the law on the liberalization of criminal sanctions, more than 26,000 persons, who provided compensation for damage in the amount of 412 billion sum, received non-custodial penalties.
- The Act on amendments to certain legislative acts in connection with the transfer to courts of the right to authorize detention, adopted on 11 July 2007, provided procedural reinforcements for the new mechanism for the courts to apply acts of amnesty at the pretrial phase and while a sentence is being served. The Act on amendments to certain legislative acts in connection with improving the application of acts of amnesty, which entered into force on 23 December 2008, was the logical extension of the gradual transfer to the courts of the protection of the constitutional rights and interests of citizens. This transfer was carried out under presidential supervision.

In connection with the implementation of court procedure to halt criminal proceedings on the basis of an act of amnesty, ways to terminate preliminary investigations referred to in article 372 of the Code of Criminal Procedure include a procedure for handing down a decision to refer a case to court for reconciliation between the parties or the cessation of criminal proceedings under an act of amnesty. Also important is that in accordance with the above-mentioned Act, the Code of Criminal Procedure has been expanded to include chapter 63, entitled "Application of an act of amnesty at the pretrial stage", which consists of five articles comprising entirely new procedures.

This further clarified the process related to procedures for the interrogating or investigating officer to follow when sending materials from a pre-investigation verification or criminal case to the prosecutor; to procedures for the prosecutor to consider requests for application of an act of amnesty; and to submission of petitions to the court on refusal to initiate a criminal case or dismissal of a case.

Procedures related to a court hearing or decision of the court have also been further clarified.

Thus, the application of acts of amnesty has been placed under the authority of an objective body — the court.

In addition, sentencing procedures have been established for cases in which the offender has demonstrated sincere remorse. The adoption of the Act creates real legal guarantees of a more lenient sentence when the offender demonstrates sincere remorse. (The length of the sentence may not exceed two thirds of the maximum penalty provided for in the relevant article of the Special part of the Criminal Code.) The Act will increase rates of crime detection, make investigative activities in the immediate aftermath of a crime more effective and ensure genuine reparations for injury suffered and compensation to the victim for the material damage suffered.

An Act that contains provisions to further strengthen the legal protection of businesses and liberalize the elements of criminal offences was adopted on 29 December 2012. In particular, for certain categories of crimes, the period of time that must elapse for a criminal record to be expunged has been reduced. The threshold for elements of criminal offences, such as the scope of financial damage suffered, has been raised.

In addition, under a new mechanism, criminal cases for certain categories of crimes committed by an employee against a legal entity in which the government is not a shareholder are initiated only by application of an owner or manager or an authorized governing body of the legal entity in question.

Sociopolitical situation and criminality in Uzbekistan

The profound transformation of practice in criminal justice and law enforcement is having a positive impact on the sociopolitical situation and criminality in Uzbekistan.

Another important measure is the complete overhaul of the system of criminal records. When an individual's criminal record is expunged, all the legal ramifications of having such a record are nullified, ensuring much broader protection for the rights and interests of persons who have served their sentences and enabling them to engage in business activities.

Our achievements in guaranteeing the rights and interests of the individual through judicial reform are far-reaching in scale and significance. Of particular importance in this regard is the practice of declaring acts of amnesty, which began in the early years of independence.

Each year, pursuant to articles 80 and 93 of the Constitution, an act of amnesty is adopted under which prisoners are granted a pardon, released from prison and allowed to return to their families. Amnestied persons are also given assistance to help them improve their health and living conditions and find employment.

In the years since Uzbekistan began its independent development, 24 amnesties have been declared.

It should be emphasized that the policy of humanism and generosity has changed for the better the lives of people who have committed crimes through negligence and have shown genuine remorse.

For example, the act of amnesty promulgated in 2012 covered 64,659 persons. A total of 22,193 individuals were pardoned, criminal prosecutions were dropped against 18,285 offenders and 24,181 prisoners had their sentences commuted. The 2013 amnesty covered nearly 70,000 persons, including 3,237 convicts who were released directly from prison.

Abolition of capital punishment

An important step in the liberalization of criminal legislation was the abolition of capital punishment as of 1 January 2008. In addition, the most severe penalty — life imprisonment — applies to only two types of crimes, terrorism and aggravated homicide, both of which may also be punished by alternative, less harsh penalties.

Legal profession

A major priority for further judicial reform aimed at ensuring comprehensive and effective protection of human rights and freedoms is the strengthening of the legal profession.

Article 116 of the Constitution guarantees the right of citizens and organizations to professional legal assistance provided by a lawyer.

In order to continue the reform of the legal profession, a presidential decree was adopted on 1 May 2008 that set out the key points of further reform. The Bar Association of the Republic of Uzbekistan, of which every lawyer in the country is a member, was established as a basic institution of civil society.

On 31 December 2008, an Act aimed at improving the legal profession was adopted. The main achievement of this Act has been to further reform the profession and ensure comprehensive and effective protection of human rights and freedoms by giving citizens access to qualified legal assistance.

In order to implement article 116 of the Constitution, a statute was enacted on 15 September 2008 under which lawyers are the only persons allowed to serve as defence counsel in criminal cases. At the request of an individual who is suspected, under indictment or on trial, counsel may be accompanied by a close relative or legal representative of that individual.

Moreover, on 11 September 2009 an act was adopted under which lawyers are the only persons who may represent parties to civil cases in the courts.

The purpose of these rules is to prevent persons who lack legal expertise from participating as counsel in court proceedings and to improve the quality of legal assistance provided to citizens.

Enforcement of judgements

An important and integral element of justice is the enforcement of judicial decisions.

In recent years, Uzbekistan has implemented a number of measures to ensure more efficient enforcement of judgements. The system of the Department for the Enforcement of Judicial Decisions and Logistics and Financial Support of Judicial Activities in the Ministry of Justice of the Republic of Uzbekistan has been substantially transformed; legislation on enforcement of the decisions of courts and

other bodies has been enhanced; and stricter liability for failure to enforce judicial decisions and obstruction of enforcement has been introduced.

The Act on Enforcement of the Decisions of Courts and Other Bodies established a system for enforcement of the decisions of courts and other bodies, set out the procedure and special circumstances for their enforcement, and strengthened the status of bailiffs and provided for legal safeguards for their activities.

On 14 January 2009 an act was adopted that amended several statutes of the Republic of Uzbekistan on improvement of the enforcement process. The act provides for greater accountability for the enforcement of judicial decisions; the establishment of an effective system for the prevention, detection and suppression of crime; strengthening of the organizational and legal framework for the activities of the Judicial Department; and enhanced status for bailiffs.

With respect to giving the Judicial Department investigative functions for cases within its jurisdiction, investigative and administrative units were established by Presidential Decree No. PP-1900 of 29 December 2012 on measures to further improve the activities of the Department for the Enforcement of Judicial Decisions and Logistics and Financial Support of Judicial Activities in the Ministry of Justice.

Policy outline on further strengthening of democratic reforms and development of civil society in Uzbekistan

In a statement to a joint session of the houses of parliament on 12 November 2010, President Islam Karimov put forward a series of legislative initiatives also aimed at further reform of the judicial system.

Their key components are the following:

1. Strengthened judicial oversight of preliminary investigations and inquiries and expanded application of habeas corpus in criminal proceedings, meaning that the power to take certain procedural coercive measures (dismissal from work and placing a person in a medical institution) at the pretrial stage is transferred from the prosecutor's office to the courts. The Act required to carry out these measures was adopted on 18 September 2012.
2. Adoption of the Investigations Act. It should be noted that the Investigations Act adopted on 25 December 2012 defines the concept of investigation; sets out the tasks, principles, forms and methods of investigation; stipulates the agencies responsible for investigations and delimits their authority, rights and duties; and indicates the types of investigative activities allowed and the procedure for conducting them. The Act also enshrines social and legal protections for the personnel of investigative agencies and for individuals assisting with investigations and their family members.
3. Adoption of an act on internal affairs agencies governing the legal status of internal affairs agencies and their personnel. The law will set forth the basic tasks, functions, rights and duties of internal affairs agencies and strengthen social protection for internal affairs personnel.
4. Adoption of an act providing for further mechanisms of judicial protection for businesses, including in their relations with government agencies. On 14 May 2014, an act was adopted that further strengthens judicial protections for businesses in a number of areas:

- The Code of Commercial Procedure was amended to provide, among other things, that the commercial court also has jurisdiction in disputes involving persons who have lost the status of individual owner but who meet the relevant requirements as a result of their previous business activities;
- A provision was added to the Act on State Control of Business Activity whereby the filing of a complaint in court entails suspension of the action or decision that is the subject of the complaint, except for actions or decisions aimed at preventing disasters, epidemics or other real threats to human life or health, until such time as a court decision enters into force.

5. Adoption of an amended Code of Administrative Liability to replace the Code in effect since 1994. The Code will be based on the trend towards decriminalization in penal law. Certain offences will be moved from criminal to administrative jurisdiction and the law will provide for measures to enhance and democratize the procedural mechanisms for the handling of administrative cases. This document will further extend the rule of law and the protection of individual rights in the area of administrative law.

Achieving the goals set out in the policy outline will strengthen judicial protections for the rights, freedoms and legitimate interests of citizens. The successful implementation of all the judicial reforms outlined will be not only the outcome of democratization and liberalization of the society and the State but also a guarantee of their continuation, enabling Uzbekistan to move further along the path "from a strong State to a strong civil society".

On the whole, the democratization reforms that have been carried out have helped to strengthen judicial protections for individuals, enhance the role of lawyers, and accelerate the processes of democratization, social renewal, reform and modernization of the country.
